



SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

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U.S. Environmental Protection Agency
National FOIA Office
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460
Submitted VIA FOIAonline

November 4, 2020

Re. Underground Injection Control Program for Class II Wells Request

Dear FOIA Officer:

This request for information is submitted on behalf of the University of Texas School of Law Environmental Clinic ("Clinic") to the U.S. Environmental Protection Agency, pursuant to the Freedom of Information Act, ("FOIA"), 5 U.S.C. § 522.

The Clinic requests the following records:

- any and all documents reflecting the requirements that comprise the EPA approved Underground Injection Control Program for Class II wells in the State of Texas, as approved in 1982 and referenced at 40 CFR § 147.2201; and
- any and all documents regarding EPA approval of any visions to the Underground Injection Control Program for Class II wells in the State of Texas, as approved in 1982.

For the purposes of this request, the terms "record" and "records" mean all materials in whatever form (handwritten, typed, electronic or otherwise produced, reproduced, or stored) in the EPA's possession, including, but not limited to, letters, memoranda, correspondence, notes, completed forms, studies, reports, reviews, e-mails, documents, databases, drawings, graphs, charts, maps, photographs, minutes of meetings, and any other compilation of data from which information can be obtained.

Exempt Records: If you regard any of the requested records to be exempt from required disclosure, please include in your full or partial denial letter sufficient information for the Clinic to appeal the denial. In addition, if you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Clinic at the address listed above. If the requested documents do not exist, please indicate that in your written response.

Fee Waiver Request: The Clinic requests a fee waiver for this request. EPA regulations provide that “educational or scientific institutions, whose purpose is scholarly, noncommercial research, will be charged only for the cost of record duplication, except that the first 100 pages of duplication will be furnished at no charge.” 40 C.F.R. § 2.107(c)(ii). The Clinic qualifies under this standard for a fee waiver as the University of Texas is an educational institution, and the Clinic requests these records for educational purposes and will realize no commercial benefit from the release of the requested records.

In addition, the Clinic requests a fee waiver pursuant to 40 C.F.R. § 2.107(l) for the reasons below:

1. The subject of this request concerns the operations and activities of the US EPA and of its approval of the Railroad Commission of Texas to administer an Underground Injection Control (UIC) Program under the Safe Drinking Water Act in Texas.
2. The information requested is "likely to contribute" to an understanding of government operations or activities. It concerns identification of the requirements in the Texas UIC program approved by EPA and any changes made to that approved program since initial approval. Because some of the Texas statute and regulations have changed since program approval, it is difficult to determine whether the current statutes and regulations available online reflect approved UIC requirements. Unlike the approved State Implementation Plans under the Clean Air Act, to our knowledge, approved UIC programs are not available online. Without access to the requested documents, the public cannot know what requirements Texas has agreed to meet under the Underground Injection Control program

Release of the documents will allow the Clinic to contribute significantly to a public understanding of the approved UIC program in Texas and the Railroad Commission's implementation of that program. The information requested will be reviewed by the Clinic, which has many years of expertise in environmental law and the interaction between states and EPA in the implementation of programs pursuant to federal environmental statutes. Clinic director Kelly Haragan has practiced environmental law for twenty-five years and has participated as a speaker at numerous EPA sponsored trainings for community groups regarding topics including the Clean Air Act's NSR and Title V programs and environmental justice.

The Clinic works to assist primarily low-income communities and communities of color throughout the state of Texas and works closely with other Non-Governmental Organizations (NGO) and legal aid organizations who assist similar communities. The Clinic regularly puts on trainings for community groups to explain environmental laws and regulatory processes and to help communities become involved in protecting their neighborhoods. The Clinic will use the requested documents to develop materials explaining the requirements of the EPA-approved, Texas UIC program and will provide

related trainings for community groups and NGO and legal aid partners. The Clinic will also make the requested materials broadly available to these groups and others online.

3. The Clinic has no commercial interest in the documents requested.

In the event that the EPA does not waive fees, the Clinic asks for a notification of the basis of the decision and to provide an estimate of any costs. Please do not move forward with actions that would require expenditures of more than \$100 until the Clinic has the opportunity to consider the estimate of costs and an appeal.

To the extent the records requested are available in electronic format, we request them in that format. Please send records Daniela de Souza c/o Environmental Clinic at the address above. In the event that you have any questions regarding the scope or substance of these requests, please contact Daniela de Souza by email (ddesouza@utexas.edu) or phone (512-587-9293).

Thank you for your time and assistance,

Daniela de Souza
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